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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/960,756 | 09/21/2001 | Keith Branden Eberlein | CM04703H | 6318 |

22917 7590 06/30/2005

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EXAMINER

GESESSE, TILAHUN

ART UNIT PAPER NUMBER

2684

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/960,756

Applicant(s)

EBERLEIN ET AL.

Examiner

Tilahun B Gesessse

Art Unit

2684

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-5, 13-19 is/are rejected.
- 7) ☒ Claim(s) 6-12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is in response to applicant's amendment and response filed March 18, 2005, in which claims 1-19 are pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5,13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schieve et al (US patent No. 5,263,177).

Claim 1, Schieve discloses a communication system (figure 1, users 121 and 125 are within the overlap area of base stations coverage area of 111,113,115,117), at least a first and second simulcast station at a first remote site (121, 125, and flow chart 509 No, of figure 5 queue channel for later assignment and (513, and see column 2, lines 30-60). Schieve discloses detecting unavailability of the first simulcast station for communicating on a first communication resource (flow chart of figure 5, 509 and 513 and column 4, lines 5-28 and figure 5). Schieve discloses determining if the second simulcast station is available for supporting simulcast transmissions on the first communication resource, (see column 2, lines 58-60, it is readily seen that the first vehicle 121 does not experience distortion from the second site 103) and if the second simulcast station is available, assigning the second simulcast station to

Art Unit: 2684

communicate on the first communication resource(column 4 lines 29-39 and figure 6).

Schieve does not teach a simulcast station failure. However, Schieve suggests that vehicle 121 at the overlap region of coverages 111 and 113, and the vehicle experience distortion from site 101, while does not experience distortion from site 103, which means site 101 is unavailable (see figure 1 and column 2, lines 30-60). Therefore, it would have been obvious to an artisan of ordinary skill in the art at the time of the invention was made to utilize the second site as a back up over the overlap region when ever, the first site fails.

Claim 2, Schieve discloses communicating, by the second simulcast station, simulcast messages on the first communication resource (abstract). Claim 3, Schieve discloses determining and assigning are performed by a simulcast site controller (column 3, line 42-column 4, lines 39). Claim 4, Schieve discloses detecting, is accomplished by the simulcast site controller failing to receive a response to a message sent to the first simulcast station (column 3, lines 14-41 and figure 2). To illustrate, when a remote sends it ID for registration base sites with a significant distance, gets the ISW at too low threshold, therefore, this is what the examiner considered a message failed to be received by simulcast site.

Claim 5, Schieve discloses a comparator adapted for sending data to be communicated over the simulcast channel to one or more of the simulcast stations along with a timestamp specifying when the data will be transmitted (column 3, lines 23- 41). Claim 13, Schieve discloses the unavailability of the first

Art Unit: 2684

simulcast station is due to a malfunction of the first simulcast station (station out of the coverage is considered as a malfunction, (column 4, lines 47-51).

Claims 14-17, Schieve discloses a wireless communication system (figure 1) employing simulcast communication, a method for initiating simulcast communication in a simulcast site (figure 1A), the simulcast site, a plurality of remote sites ((101, 103, 105, 107), determining availability of a plurality of simulcast stations located at the plurality of remote sites (abstract, distortion occurs because the signals are not completely time and frequency aliened when they reach the remote units) assigning, by a simulcast site controller (109), members of a first simulcast channel, the members comprising respective first-available simulcast stations at each of the remote sites (flow chart of figure 5, 509 and 513 and column 4, lines 5-28 and figure 5), and performing simulcast communication using the first simulcast channel (column 4 lines 5-28 and figure 5).

Schieve does not teach a simulcast station failure. However, Schieve suggests that vehicle 121 at the overlap region of coverages 111 and 113, and the vehicle experience distortion from site 101, while does not experience distortion from site 103, which means site 101 is unavailable (see figure 1 and column 2, lines 30-60). Therefore, it would have been obvious to an artisan of ordinary skill in the art at the time of the invention was made to utilize the second site as a back up over the overlap region when ever, the first site fails.

Art Unit: 2684

Claims 18-19, Schieve discloses a communication system (figure 1) at least a first and second simulcast station at a first remote site (101,105,107 sites in communication with remotes 121 and 125 over the overlap regions, column 2, line22- column 3, line 13). Schieve discloses detecting unavailability of the first simulcast station for communicating on a first communication resource (flow chart of figure 5, 509 and 513 and column 4, liens 5-28 and figure 5). Schieve discloses determining if the second simulcast station is available for supporting simulcast transmissions on the first communication resource, (flow chart of figure 5, 509 and 513 and column 4, liens 5-28 and figure 5) and if the second simulcast station is available, assigning the second simulcast station to communicate on the first communication resource (column 4 lines 29-39 and figure 6).

Schieve does not teach a simulcast station failure. However, Schieve suggests that vehicle 121 at the overlap region of coverages 111 and 113, and the vehicle experience distortion from site 101, while does not experience distortion from site 103, which means site 101 is unavailable (see figure 1 and column 2, lines 30-60). Therefore, it would have been obvious to an artisan of ordinary skill in the art at the time of the invention was made to utilize the second site as a back up over the overlap region when ever, the first site fails.

Allowable Subject Matter

4. Claims 6-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments with respect to claims 1-5,13-19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tilahun B Gesesse whose telephone number is 571-272-7879. The examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung can be reached on 571-272-7882. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR

Art Unit: 2684

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tilahun Bezu 6/25/08
TILAHUN GESESSE
PRIMARY EXAMINER